


DEPUTY DIRECTOR ACTION REQUEST

To: Ted Rauh, Deputy Director
Compliance and Enforcement Division

From: 
Scott Walker
Manager
Engineering Support Branch

Prepared By: Wes Mindermann
(916) 341-6314
Wes.Mindermann@CalRecycle.ca.gov

Reviewed By: Steve Levine, Legal Office

Prepared On: December 10, 2010

Subject: **CONSIDERATION OF APPROVAL OF A NEW PROJECT FOR
THE SOLID WASTE DISPOSAL AND CODISPOSAL SITE
CLEANUP PROGRAM (SOLID WASTE DISPOSAL SITE
CLEANUP TRUST FUND, FY 2010/11)**

REQUESTED ACTION:

Department of Resources Recycling and Recovery (Department) staff have completed an evaluation and recommend approval of the Department-managed cleanup of the Bodega Bay Disposal Site (IDS) consisting of five derelict, abandoned commercial vessels pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program).

Time Factor: Decision required no later than December 13, 2010.

Options: The Deputy Director may decide to:

1. Approve the proposed project;
2. Disapprove the project; or
3. Direct staff to provide additional information and bring the project back for future consideration.

Recommendation: Staff recommends Option 1.

PROJECT SCOPE:

Proposed Remediation Pilot Project: The Program was requested by the Sonoma County Sheriff, Sonoma County Regional Parks Department Harbor Master, and the California Department of Fish and Game to remove five commercial abandoned vessels from Bodega Bay before large winter storms threaten to sink the vessels. The U.S. Coast Guard also supports the effort to remove these abandoned vessels. Four of the vessels are currently being maintained by the harbor master at the Spud Point Marina, which is owned and operated by Sonoma County Parks, and one vessel is aground in the middle of the bay. Two of the berthed vessels currently have pumps on board to maintain the vessels and are at risk of sinking in the marina if power is lost.

The project will combine available resources to abate the vessels. The U.S. Coast Guard has expended over \$40,000 to remove the fluids and hazardous waste from two of the largest fishing vessels and has responded a number of times to the vessel a ground. Sonoma County Park Department will allow the use of their commercial dock and park to abate the vessels, while the Sheriff's Office will provide vessel support and adjudication resources.

Abandoned and derelict vessels and related abandoned boating structures are a pervasive environmental and public safety problem in coastal and inland waterways of California. The value of vessels decreases with age while the cost of maintaining the vessel in operating condition and the costs of storing or docking the vessels increase. The result is that vessel owners are sometimes unable to pay or decide not to pay to operate, maintain, and store their vessels. The cost to correctly destroy a vessel is over \$500 for just small vessels and increases significantly for larger commercial vessels. Vessel owners sometimes illegally abandon the vessels by leaving them at berths or docks while failing to pay the storage costs; running the vessels aground on the shores of public waterways; or sinking the vessels in public waterways.

Abandoned and derelict vessels are threats to public health and safety and the environment in communities along California's coastal and inland waterways. Abandoned vessels can impact water quality due to hazardous pollutants they contain, including oil, antifreeze, gasoline, asbestos, anti-fouling paints, heavy metals, PCBs, sewage, etc. In addition, as vessels deteriorate they become sources of debris that washes onto the shore or remain a water hazard interfering with aquatic and marine life. Finally, vessels are typically abandoned on or very near shorelines where the pollutants and debris can impact water quality and people and present attractive nuisances for additional dumping from the shore. Marinas and marine related businesses that have discontinued operations also leave sunken docks, metal pilings, cranes, barges and industrial engines that become illegal solid waste disposal sites.

The California Department of Boating and Waterways, recognizing this issue and the significant fiscal burden imposed on local agencies statewide, created the Abandoned Watercraft Abatement Program (AWAP) in 1997. The AWAP funding comes from registration fees on recreational boats, and the funding is therefore restricted to abatement projects involving recreational boats. Thus, AWAP funds cannot be used to remove abandoned commercial boats, which are boats/ships registered in California as vessels involved in commercial enterprises, boats

documents by the U.S. Coast Guard as commercial boats either from California or other states, and all boats with out of country documentation. While the U.S. Coast Guard does have resources available to deal with vessels that present navigational hazards in major waterways or that are discharging hazardous pollutants to the watercourse presenting an imminent threat to public health and safety and/or the environment, there are no resources for removing commercial vessels once they become abandoned and lie derelict along the shoreline or abandoned in a harbor. Likewise, there is no vessel-related funding available to remove abandoned materials related to the marine industries. There is an ongoing series of meetings between federal, state, and local agencies to identify and implement a program and funding source for abatement of commercial marine vessels, but the issue remains unresolved.

Site Prioritization: Because of the location of the vessels in the bay and estuary, and the pollution and public safety threat posed by the vessels, the sites are priority category A1. Priority A1 is a suspected condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within 1,000 feet.

California Environmental Quality Act (CEQA): Program staff has reviewed the proposed project and determined that it is categorically exempt per the Class 8 exemption (14 CCR §15308: Actions by Regulatory Agencies for Protection of the Environment). Compliance with CEQA requirements will be made with a Notice of Exemption filed by the Program staff.

Enforcement Actions and Cost Recovery: Based on discussion with the Department's State and Local Illegal Dumping Enforcement Task Force, abandoned vessels in public waters of the state are a subset of the overall state illegal dumping problem. In 1997 the Board approved a cleanup project under the Program that was completed to remove abandoned vessels impacting Redwood Creek in San Mateo County. In November 2009, the Board (CalRecycle soon thereafter) approved a pilot project under the Program that was completed to remove abandoned vessels impacting Contra Costa County.

The Program addresses cleanup of solid waste disposal and codisposal sites, in accordance with Public Resources Code (PRC) Section 48020(2)(b). Under the Integrated Waste Management Act ("IWMA"), a "disposal site" is defined as "the place, location, tract of land, area, or premises in use, intended to be used, or which has been used for the disposal of solid wastes." (PRC Sec. 40122) The deposition of solid waste into waters of the state is addressed in the Fish and Game (F&G) Code, which makes no site specific delineations but rather collectively refers to the "waters of this state" (F&G Code Secs. 5650 and 5652). Program staff submits that as the abandoned vessels and the solid wastes contained therein are located at discrete locations (i.e., sites) upon submerged lands, these lands constitute disposal sites under the IWMA. Accordingly, the Department has instituted a series of pilot projects to explore the efficacy of utilizing Program resources for these types of sites. The submerged lands involved in this situation include a tidal flat within the bay that has resulted in one of the vessels being periodically partially and, at times, completely out of the water. The other sites consist of vessels that would be in a similar situation, except that the Harbor Master has assumed control of those vessels and is maintaining them to prevent their ultimate disposal by being run aground

and abandoned and/or sunk. Thus in approving this item, the Department would be furthering its' endorsement of this interpretation in these pilot projects and continuing to extend the IWMA's jurisdiction to discrete submerged lands upon which solid waste has been deposited. Such an extension may also have implications on enforcement authority (as well as potential jurisdictional issues with other agencies), in that solid waste local enforcement agencies and/or the Department may be considered amongst the agencies with regulatory responsibility for such lands.

The lead agency for enforcement of state laws pertaining to abandoned vessels is local law enforcement (in this case the Sonoma County Sheriff Marine Unit) under Sections 510 through 527 of the Harbors and Navigation Code (HNC). Owners of vessels that are abandoned may be subject to fines and confiscation and salvage or sale by local agencies if not properly removed by the owner. In many cases no responsible parties can be identified through registration or other information. With respect to the illegal disposal sites in this item, the Sonoma County Sheriff Marine Unit has agreed to enforce the HNC to identify vessel owners responsible for the disposal and through prosecution or voluntary efforts effect removal of the vessels by the owners. It is anticipated that no responsible party will be identifiable for the majority of the vessels proposed in this Item. In cases where a responsible party is identified, Department staff will work with the Sonoma County Sheriff Marine Unit to ensure cost recovery is pursued to the extent practicable from the private owners. Since these sites are located within public lands (i.e., the waters of the State of California), dedicated and maintained for recreational and ecological purposes for the public benefit, cost recovery need not be pursued against the public agency landowner.

Pursuant to PRC Code Section 48021(c), the County could have applied for a grant from the Department to abate the conditions at these sites; however, the County has requested a Department-managed cleanup in lieu of a grant, in accordance with PRC 48021(b)(2), on the grounds that the County does not have sufficient financial and staff resources to implement this project in a timely manner and there are no available grant funds at this time.

Support: Cleanup assistance was requested from the Sonoma County Sheriff, Sonoma County Regional Parks Department Harbor Master, and the California Department of Fish, U.S. EPA Region 9, and the U.S. Coast Guard, who are working cooperatively with the Department.

Opposition: Staff has not received any written opposition at the time this document was submitted for approval.

FISCAL IMPACTS:

The Department-managed project will be performed on a time-and-materials basis under the Program's Southern California remediation contract (IWM07037), which is the only current contract remaining with sufficient funds and resources available to perform the remediation in a timely manner. The Program's contractor has conducted a site visit with Program staff and developed a work plan with a preliminary cost estimate of \$245,000, which includes a 10 percent contingency. Actual costs may vary depending on a variety of factors including, but not limited


to the quantities and/or types of materials encountered, market forces, the required timeframes for cleanup, and competitive bids from subcontractors.

Funding for the project will be derived from previously encumbered funds from the Solid Waste Disposal Trust Fund in the Program's Southern California remediation contract (IWM07037). The contract currently has sufficient funds available from the Solid Waste Disposal Trust Fund to complete this project.

FINDINGS:

On the basis of the information and analysis in this Request for Action, the Department hereby approves this project under the Solid Waste Disposal and Codisposal Site Cleanup Program.

In addition, the Department directs staff to prepare and file a Notice of Exemption for the project with the State Clearinghouse.



Ted Rauh, Deputy Director
Compliance and Enforcement Division

DECEMBER 10, 2010
Date

